

Chapter CCXXVI.¹

SENATE AMENDMENTS TO GENERAL APPROPRIATION BILLS OR PROVIDING APPROPRIATIONS ON OTHER BILLS.

1. Provisions of the rule. Section 1571.
 2. Rule not applicable to Senate amendment when considered in the House. Sections 1572, 1573.
 3. When sent to conference from the Speaker's table. Sections 1574–1576.
 4. Authorization may be granted by special order. Section 1577.
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1571. Senate amendments proposing legislation or unauthorized appropriations on general appropriation bills, or appropriations on other bills, must with certain exceptions, be severally submitted to the House.

Section 2 of Rule XX provides:

No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of Rule XXI, if said amendment had originated in the House, nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.

The submission of Senate amendments as integral parts of conference reports requiring adoption or rejection as a whole and to that extent preventing separate consideration of amendments which if offered in the House would be subject to points of order, was a subject of discussion from a very early date. On June 1, 1920, the procedure was modified by the adoption of the above rule in connection with other amendments to the rules designed to centralize control of expenditures.

In effect, the rule insures the House an opportunity to pass separately on appropriations proposed by the Senate to any House bill which are obnoxious to clause 2 of Rule XXI, including the Holman rule.

The rule contemplates a resolution or motion instructing House conferees, but as a matter of practice it is customary for the conferees to bring in a conference report omitting amendments affected by the rule, and after consideration and disposition of the report, amendments remaining in disagreement are then considered and disposed of by the House without further conference.

¹ This chapter has no analogy with any previous chapter.

1572. Senate amendments interdicted by clause 2, Rule XXI, are not subject to a point of order under the rule providing for a separate vote on such amendments when considered in the House, as the rule applies to conferees and their reports only.

Under the practice, it is customary for conferees to bring in a conference report on items agreed upon and report disagreement on all amendments coming within the rule and, the conference report having been agreed to, amendments in disagreement are then voted upon separately.

Debate on Senate amendments reported in disagreement by managers on the part of the House is under the hour rule, but the Member in charge is entitled to prior recognition and may move the previous question.

On February 15, 1921,¹ Mr. Charles R. Davis, of Minnesota, called up the conference report on the District of Columbia appropriation bill and certain Senate amendments thereto requiring a separate vote in the House.

Mr. James P. Buchanan, of Texas, asked as a parliamentary inquiry:

The amendments of the Senate that do not involve new legislation that we agreed to are before the House for adoption. The amendments of the Senate that did involve new legislation, and that we thought advisable to report back to the House for action are also in that conference report. The inquiry is at what period during the proceedings are we to consider the amendments that involve new legislation, which we report back to the House. Is it after the adoption of the conference report?

The Speaker² decided:

The Chair thinks the first vote would be on agreeing to the conference report, and that after that the amendments reported back would come up.

Mr. Thomas U. Sisson, of Mississippi inquired if debate would be in order on the Senate amendments to be voted on by the House.

The Speaker held:

Unless the gentleman from Minnesota moves the previous question. On each amendment as it comes up the gentleman from Minnesota, Mr. Davis, is entitled to the floor and entitled to hold the floor for one hour, or yield that time, or move the previous question.

The conference report having been agreed to, the first Senate amendment was read, when Mr. James V. McClintic, of Oklahoma, inquired whether the amendment was subject to a point of order.

The Speaker held that no Senate amendment was subject to a point of order in the House, and that the rule as to Senate amendments on appropriation bills applied only to conferees and their action in conference; that the Senate amendments were not regularly before the House and the House might concur, insist on disagreement, concur with amendments, or authorize the conferees to return to conference; and that any conference report submitted by conferees in violation of the rule requiring authorization by the House would be subject to a point of order.

¹Third session Sixty-sixth Congress, Record, p. 3208.

²Frederick H. Gillet, of Massachusetts, Speaker.

1573. On February 19, 1921,¹ Mr. John A. Elston, of California, called up the conference report on the Indian appropriation bill.

The conference report was agreed to and the House proceeded to the consideration of Senate amendments requiring a separate vote under the rule and reported as in disagreement by the managers on the part of the House.

Senate amendment numbered 13, providing for the continuation of the Hope Indian School for Girls at Springfield, S. Dak., being read, Mr. Homer P. Snyder, of New York, made the point of order that it was legislation, unauthorized by law, and not in order on an appropriation bill.

The Speaker² held:

It may not be proper for the House to put it on. That, of course, does not apply to the Senate. This is a new rule, and perhaps it is well to have it settled, as the gentleman says. The rule provides that a conference committee shall not agree to certain new legislation put in by the Senate. After a bill goes to the Senate and comes back from conference, then the conferees can not have agreed to legislation without specific authority from the House. But there is not rule to prevent the House considering such legislation put in by the Senate, and no point of order lies against it.

1574. Unanimous consent to take from the Speaker's table and send to conference a bill with Senate amendments does not waive the provisions of the rule requiring separate vote in the House on certain Senate amendments to appropriation bills.

A conference report agreeing to Senate amendments falling within the rule, and on which the House has been given no opportunity to vote, is subject to a point of order, and a point of order sustained against any such item invalidates the entire report.

On January 22, 1921,³ Mr. Charles R. Davis, of Minnesota, asked unanimous consent to take from the Speaker's table the District of Columbia appropriation bill with Senate amendments thereto, disagree to the amendments, and agree to the conference requested by the Senate.

Pending this request, Mr. Carl E. Mapes, of Michigan, inquired:

Mr. Speaker, reserving the right to object, this is the first big appropriation bill, I believe, to be sent to conference since the adoption of the new rule increasing the Committee on Appropriations and limiting the power of the conferees from that committee to accept Senate amendments to appropriation bills that would have been subject to a point of order if offered in the House of Representatives, on account of being legislation on an appropriation bill.

This bill contains several Senate amendments in the nature of legislation which have been considered by the Committee on the District of Columbia, and some of them have been passed upon by the House of Representatives itself. In fact, one of the Senate amendments to the bill, or the substance of it, is now in conference between the two Houses, represented by the legislative committee. I have no desire to object to the unanimous-consent request, because I think the conferees to be appointed by the House are in accord with the action that the House has

¹Third session Sixty-sixth Congress, Record, p. 3506.

²Frederick H. Gillett, of Massachusetts, Speaker.

³Third session Sixty-sixth Congress, Record, p. 1889.

heretofore taken, but to protect the rights of the House and of the legislative committee I would like to have an interpretation of the new rule by the Speaker. The rule provides that:

“No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of Rule XXI, if said amendment had originated in the House, nor any amendment of the Senate providing an appropriation upon any bill other than the general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by separate vote on every such amendment.”

My question, Mr. Speaker, is when should those who are interested in the Senate amendments raise the point of order to protect their rights? Can it be done after the conferees make their report or should it be done now before the bill goes to conference?

Thereupon Mr. Finis J. Garrett, of Tennessee, submitted in writing a parliamentary inquiry, which was read by the Clerk as follows:

Mr. Garrett submits the following parliamentary inquiry: Section 2 of Rule XX provides

“Section 2, Rule XX:

“2. No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of Rule XXI, if said amendment had originated in the House, nor any amendment of the Senate providing an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.”

If the House by unanimous consent or by special resolution from the Committee on Rules disagrees to all Senate amendments en bloc and asks for or agrees to a conference with the Senate, and there are Senate amendments obnoxious to the rule above quoted and the conferees without instructions from the House recede from their disagreement and agree to such amendments, will the conference report so including such illegal amendments by subject to a point of order, as in cases where conferees exceed their authority and include in their report matters not in disagreement?

The Speaker ¹ said:

This rule is a radical departure from the custom of the House in the past, and it is, as the gentleman from Tennessee and the gentleman from Michigan suggest, important that the House should know in advance what the ruling of the Chair would be, and both gentlemen were courteous enough to suggest to the Chair in advance that they wished to raise the question, and the Chair has been considering it.

What the Chair wishes to do, as every Member of the House will wish, is to adopt the system which will best further the business of the House. It is very obvious that this new rule is going to interfere with the past methods of conferences, because as the gentleman from Tennessee suggests, the House conferees do not go into “a free conference”; they are hampered by this rule, and what the Senate conferees will do it is impossible to predict.

At the same time the Chair, of course, is bound as far as practicable, to give the interpretation which the Chair thinks was intended by the House in adopting the rule, and also to facilitate the transaction of business. It might be construed, and I suppose this is the point which the gentlemen both wish to have settled, that when the House by unanimous consent disagrees to the Senate amendments and sends the bill to conference, the House thereby waives the provisions of the new rule, which says that there shall be a separate vote upon each question which is subject to the rule. But the Chair thinks that certainly would be a strained interpretation, and one which, at first, at any rate, ought not to be adopted. We ought at least to have some experience under the rule, and let it develop and see what difficulties arise; and, at any rate, at the outset we ought to more strictly follow the specific language of the rule, which is that nothing “shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.”

¹ Frederick H. Gillett, of Massachusetts, Speaker.

The Chair does not imagine that that means in the future that there will necessarily be a separate vote, after the conferees have reported, on every such provision. The Chair thinks very likely by such agreement the House could, if it desired to, have unanimous consent and agree to them en bloc. But the Chair thinks that now the ruling ought to be that if the conferees should agree to an item which was repugnant to this rule, it would so far invalidate the conference report that anybody could make the point of order against it. Therefore, disagreeing by unanimous consent to the Senate amendments and agreeing to the conference asked for by the Senate leaves it subject to a point of order, if the conferees in any respect agree to an item which is obnoxious to the rule.

The purpose of the clause of the rule is to prevent conference committees on appropriation bills legislating without the permission of the House, and the rule provides that the conference committees shall not have the right to agree to a Senate amendment which is obnoxious to the rule.

1575. Instance wherein the rule requiring separate vote on Senate amendments to appropriation bills was waived by unanimous consent and conferees were authorized to agree to such amendments in conference.

On December 12, 1930,¹ Mr. William R. Wood, of Indiana, submitted the following request:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 14804) making appropriations for emergency construction, disagree to the Senate amendments, and ask for a conference with the Senate; and, further, that the managers on the part of the House at the conference on the disagreeing votes of the two House on such bill be given special authority, as provided by clause 2 of Rule XX, to agree to any amendment of the Senate providing for an appropriation.

I will say that the purpose of asking this authority is because of the fact that this bill is not a general appropriation bill, and when we come to conference the conferees could not agree on matters of appropriation.

Mr. William B. Bankhead, of Alabama, inquired if agreement to the request was such a waiver as would preclude points of order by any Member of the House on that phase of the conference report.

The Speaker² said:

The Chair thinks it would have the effect of waiving the point of order provided by clause 2 of Rule XX, but not as to anything else.

Is there objection to the request of the gentleman from Indiana?

There being no objection, the request was agreed to, and the Speaker announced the appointment of conferees.

1576. A point of order will not lie against a Senate amendment providing an appropriation on a House bill at the time request is made to take the bill from the Speaker's table and send it to conference for the reason that the bill is not then under consideration.

On February 11, 1921,³ Mr. James W. Good, of Iowa, asked unanimous consent to take from the Speaker's table and send to conference the sundry civil appropriation bill.

¹Third session Seventy-first Congress, Record, p. 633.

²Nicholas Longworth, of Ohio, Speaker.

³Third session Sixty-sixth Congress, Record, p. 3029.

Mr. Thomas L. Blanton, of Texas, presented a point of order against Senate amendment numbered 143, appropriating \$225,000 for the United States Employment Service.

The Speaker¹ declined to entertain the point of order for the reason that the bill and amendments were not under consideration at the time.

On the following day,² Mr. John A. Elston, of California, submitted the same request with reference to the Indian appropriation bill, when Mr. Charles D. Carter, of Oklahoma, called attention to the ruling made on the point of order raised by Mr. Blanton on the preceding day and inquired if it applied to the bill affected by the pending request.

Mr. James R. Mann, of Illinois, said:

A Senate amendment is not subject to a point of order under the rules of the House. The conferees are not authorized to agree to the Senate amendment, and if they did that without authority of the House and brought in a conference report the conference report would be subject to a point of order. You can not make a point of order to a Senate amendment. The rule is that the conferees can not agree to the Senate amendment without authority from the House, and the conference report that did attempt to agree to it would be subject to a point of order.

The ruling previously made on the point of order was affirmed by the Speaker.

1577. Managers on the part of the House may be authorized by resolution reported from the Committee on Rules to agree to Senate amendments carrying appropriations on a bill not originating as an appropriation bill in the House.

On October 27, 1921,³ Mr. Philip P. Campbell, of Kansas, from the Committee on Rules, reported, by direction of that committee, the following resolution:

Resolved, That the managers on the part of the House on the committee of conference on the disagreeing votes of the two Houses on the bill (S. 1072) be, and they are hereby, given specific authority, as provided by clause 2 of Rule XX, to agree to an amendment of the Senate providing for an appropriation.

Mr. Campbell explained:

Mr. Speaker, under the rules of the House the conferees can not agree to a Senate amendment to a House bill providing for an appropriation, the bill not having originated in the House Committee on Appropriations or reported by that committee. This is the road bill. The Senate so amended it that it carries an appropriation. This is to authorize the conferees on the part of the House to agree with the Senate conferees on an appropriation, so that the bill may be disposed of and handled in the House as the House sees fit. It is provided for under the rule.

The resolution was agreed to by the House.

On November 1,⁴ Mr. John M. Robsion, of Kentucky, called up the conference report on the bill (S. 1072), when Mr. Joseph Walsh, of Massachusetts, raised a question of order and said:

The conferees have exceeded their authority under the rules of the House in that, first, they have reported a provision making an appropriation of \$5,000,000 for the fiscal year ending

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Record, p. 3072.

³ First session Sixty-seventh Congress, Record, p. 6897.

⁴ Record, p. 7119.

June 30, 1922, for forest roads and trails, carried in section 23, and \$10,000,000 for the year ending June 30, 1923, to be available until expended.

I make the further point of order that the conferees are not authorized to agree to various appropriations made in this bill, notwithstanding the action of the House last Thursday in passing a resolution, which reads:

“Resolved, That the managers on the part of the House on the committee of conference on the disagreeing votes of the two Houses on the bill (S. 1072) be, and they are hereby, given specific authority, as provided by clause 2 of Rule XX, to agree to an amendment of the Senate providing for an appropriation.”

Clause 2 of Rule XX reads as follows:

“No amendment of the Senate to a general appropriation bill which would be in violation of the provision of clause 2 of Rule XXI, if said amendment had originated in the House, nor any amendment of the Senate providing an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.”

Now, Mr. Speaker, here is a bill carrying an appropriation of \$75,000,000, I believe, for aiding the States in the construction of post roads and rural roads and carrying an appropriation for building roads through forests and the construction of forest roads and trails. That provision, in my opinion, is clearly beyond the scope of this measure, and, being beyond the scope of the measure, notwithstanding it is inserted in the bill by the Senate by way of an amendment, unless specific authority is given to the House to agree to that particular amendment, I submit that they are without authority under the rule, notwithstanding the resolution to agree to it.

Rule XI, paragraph 54a, creates a Committee on Roads:

“To matters relating to the construction or maintenance of roads, other than appropriations therefor—to the Committee on Roads: *Provided*, That it shall not be in order for any bill providing general legislation in relation to roads to contain any provision for any specific road, nor for any bill in relation to a specific road to embrace a provision in relation to any other specific road.”

Now, forest trails are not within the jurisdiction of the Committee on Roads. The national forests come within the jurisdiction of another committee, and in so far as they are embraced within the jurisdiction of another committee, an appropriation for that purpose in a general road bill is equivalent to making an appropriation for a specific road. Therefore, Mr. Speaker, with reference to section 23 the conferees in my judgment have exceeded their authority.

With reference to the resolution passed by the House, that was an endeavor to permit the conferees to agree to an appropriation. The purpose of that rule, as it was stated here when it was offered, was to permit the House to have a separate vote on appropriations that had been inserted in measures originating in the House and which would have been out of order had they been offered by Members on the floor as amendments to the bill, inserted in the other body and coming back to this House and being sent to conference.

The Speaker¹ overruled the point of order on the ground that the resolution adopted by the House on the report of the Committee on Rules was for the express purpose of nullifying section 2 of Rule XX in this particular instance, and was agreed to by the House with that purpose in view.

¹Frederick H. Gillett, of Massachusetts, Speaker.

1578. A Senate amendment extending the jurisdiction of a commission in the expenditure of money already appropriated was held not to come within the provisions of the rule requiring a separate vote by the House.

On September 16, 1922, Mr. ¹Wallace S. Dempsey, of New York, called up the conference report on the river and harbor authorization bill.

The report having been read, Mr. Martin B. Madden, of Illinois, made a point of order on Senate amendment numbered 73 extending the jurisdiction of the Mississippi River Commission to the tributaries and outlets of the Mississippi River between Cairo and the Head of the Passes in so far as affected by the flood waters of the Mississippi River.

Mr. William H. Stafford, of Wisconsin, said in debate:

This amendment is virtually in violation of paragraph 2 of Rule XX, which provides in the last clause that no amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall first be given by the House.

Mr. Speaker, the Chair will take cognizance of the fact, I take it, that under existing law the Mississippi River Commission has available at its disposal many millions of dollars for the improvement and protection of the banks of that river. That money to-day is available running into millions—some \$6,000,000. It is a continuing appropriation. Now, what is sought by this provision? It seeks to make available the appropriation which is under the control of the Mississippi River Commission to all tributaries and outlets of the Mississippi River, and by this legislative enactment it virtually carries an appropriation to make available to its tributaries appropriations now available exclusively for the Mississippi River. It extends the purpose of the appropriation just the same as if it carried the appropriation, and in effect provides that funds for the Mississippi River improvement shall be utilized and available for tributaries of the Mississippi River. It is in effect an appropriation.

The Speaker ²ruled:

There is considerable doubt in the mind of the Chair, in the absence of exact information, as to just what the effect of this amendment would be, whether it would really extend to some new purposes the use of the funds already appropriated or not; but even if it would, it seems to the Chair that that does not bring it within the prohibition of the rule that no amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill shall be agreed to by the House managers without express authority. It does not seem to the Chair that this is an appropriation. If it does allow the use of part of the money already appropriated for a different purpose, yet it does not follow that thereby any extra appropriation is required or any extra expenditure on the part of the Government. If the Committee on Rivers and Harbors can not report such an authorization, it is difficult for the Chair to see how it could be made. The Appropriation Committee would not have the authority to do it. It seems to the Chair that it is strictly within the jurisdiction of this committee, and the Chair overrules the point of order.

¹Second session Sixty-seventh Congress, Record, p. 12760.

²Frederick H. Gillett, of Massachusetts, Speaker.